

**March 12, 1996**

**P.S. Protest No. 95-56**

**COMPUTERIZED SCREENING, INC.**

**Delivery Order No. 072368-96-N-0232**

**DIGEST**

Protest against placing a Federal Supply Schedule order for blood pressure monitoring devices is denied; while quoter in competitive selection process which preceded order has standing to protest, its contentions that the devices selected did not meet the Postal Service's minimum requirements and that a less expensive device which it offered did meet them fail.

**DECISION**

Computerized Screening, Inc., (CSI) protests the placing of a delivery order for blood pressure testing devices with CardioAnalysis Systems (CAS) under a Federal Supply Schedule (FSS) contract.

The following description of the process leading up to the placement of the delivery order is derived from materials submitted by the parties in the course of the protest.

Having established a need for blood pressure testing devices to be provided at sixteen postal facilities in eleven states in the Western Area, an Occupational Health Nurses Administrator (OHNA) in the Postal Service's Western Area identified three companies (CSI, CAS, and VitaStat) as producing equipment responsive to the requirement.<sup>1</sup> The OHNA contacted those firms to arrange for each to demonstrate its equipment. Each firm supplied a blood pressure testing device for evaluation. The devices were evaluated by a panel of postal medical authorities; they were also made available for use by employees in the Western Area office who furnished comments on the devices to the OHNA.

Following these evaluations, in October, 1995, the OHNA provided the Denver Procurement and Materials Service Center with a requisition for the required devices (PS Form

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<sup>1</sup> From the literature describing CSI's offered units, it appears that the devices are intended to allow individuals to monitor their own blood pressure without the need of a trained professional. CSI's devices comprise a "kiosk" with a seat, console, and a blood pressure cuff intended to accommodate the user's left arm.

7381) and various additional items. Typed information on the requisition described the requested equipment as "VitaStat Blood Pressure Machine," with a unit price of \$3,147 and a total estimated cost of \$50,352. However, "Vita Stat" is lined out in ink on the requisition and "CAS Model CA 1100-C" is handwritten just below it. The portion of the form where the suggested source of supply is identified contains the handwritten name and address of a CAS supplier in Houston, TX, and a contract number, "GSA #V797P3361J," which, as discussed *infra*, is the number of the CAS FSS contract.

The documents accompanying the requisition included printouts of three Power Point presentation slides relating to "Automated Blood Pressure Monitoring Equipment," one of which listed "Minimum Requirements," as follows:

- Certified by ANSI or AAMI
- Availability of next day maintenance services
- Accessible to all users
- Reliable calibration and re-calibration
- Ability to provide statistical information on demand
- Ability to provide blood pressure reading within 5mmHg accuracy
- User friendly

Another accompanying sheet, headed "Cost and GSA Information," listed the models of three suppliers, their cost per unit, and a "GSA number."<sup>2</sup> Two additional sheets set out in spreadsheet format "the FOB destination price,"<sup>3</sup> handling fees, and service policy prices for each vendor. Also enclosed were letters from the three vendors relating to issues such as freight, warranty, and service; none set out unit prices.<sup>4</sup>

The contracting officer advises that following receipt of the requisition, a purchasing specialist contacted each of the three sources which the OHNA had identified to verify their prices. Each firm did so, with both CAS and VitaStat reducing their prices from those previously furnished. In the course of obtaining CSI's price the purchasing specialist made reference to the list of minimum requirements; CSI asked for the list, and a copy was sent to it by facsimile. A November 7 letter from CSI to the purchasing specialist refers to the minimum requirements and quotes prices for two different devices, the model 501/1000 at \$2,295 and the model 502/2502 at \$3,295.<sup>5</sup> The letter states at one point that model 501/1000 "would fulfill all of [the] minimum requirements," although it states elsewhere that the model 2502 "is the only equipment in the marketplace that in fact can provide" statistical information on demand.

On November 16 the Service Center issued a delivery order to CAS against its Federal Supply Schedule contract V797P3361J for sixteen model CA 1100-C blood pressure monitors at an aggregate price of \$43,128.

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<sup>2</sup> The information was as follows:

Vita-Stat	Model 90550-03	\$3,147	V979P3181K
CAS	Model CA 1100-C	\$2,995	V797P3361J
CSI	Model 502	\$3,295	N/A

<sup>3</sup> This apparently represented shipping or packaging charges; the amounts ranged from \$78 to \$263.

<sup>4</sup> The letter from CSI set out freight and handling charges for its models 502 and 2502, and discussed its service rates and service policies, noting, in part, that upon receipt of a service call "we respond to the location with on site service within 72 hours."

<sup>5</sup> Model 1000 differs from model 501 and model 2502 differs from model 502 in having "upgraded cabinetry." CSI offered each of the related models at the same unit price.

CAS learned of the order through a letter dated November 14<sup>6</sup> from the contracting officer, a copy of which it submitted for the protest record. The letter, "Subject: Request for Quotations for Blood Pressure Equipment," references CSI's "offer . . . submitted in response to the subject request" and further states:

Three proposals were received and award has been made to Cardio Analysis Systems . . . in a total amount of \$43,128. Award was made without discussion and was based on pricing under a GSA-FSS Contract.

By letter dated November 28, Computerized Screening protested to the contracting officer the placement of the order. The protest contends that CAS does not have service available on a next day basis, and that CSI's unit "does not have the ability to provide statistical information on demand." Further, the protest contends that Computerized Screening had offered devices at a unit price of \$2,295, significantly less than CAS's price. The contracting officer referred the protest to this office for resolution pursuant to Procurement Manual (PM) 4.6.7.

The protester sent contracting officer a second letter dated December 6 which reiterated the points made in the original protest. In addition, responding to the contracting officer's advice that the order had been placed against the FSS contract "without going out to bid," the protester recounted the activity of the OHNA in contacting the three suppliers of blood pressure devices and requesting demonstrations and prices, which it contends was, "in fact, go[ing] out to bid."

The contracting officer's protest statement describes the process by which the OHNA obtained and tested devices from the three vendors. The contracting officer contends that no representations about a direct award were made in the course of the evaluations, and "other specifics were not discussed."

The contracting officer cites PM 4.4.1 c.5 for the proposition that orders placed against Federal Supply Schedule contracts are exempt from the Procurement Manual's competition requirements. He explains that no solicitation was issued for these devices, and no competition was held.

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<sup>6</sup> The discrepancy between the order date and this date is not explained.

<sup>7</sup> Section 4 of PM Chapter 4 is entitled Noncompetitive Purchasing. It defines that term, and provides that "[N]oncompetitive purchasing methods may be used only when competitive purchasing is not feasible or appropriate." PM 4.4.1 b. PM 4.4.2, Justification, sets out six circumstances in which noncompetitive purchases may be appropriate, and provides that every noncompetitive purchase must be justified in writing and approved pursuant to Management Instruction AS-710-95-7. PM 4.4.1 c. provides that "[t]his section [i.e., Section 4], applies to all purchases except" those listed in eighteen paragraphs, of which paragraph 5 provides as follows:

Orders placed against GSA's Federal Supply Schedules and from other non-GSA government sources, including Federal Prison Industries . . . . Group 70 and Group 58 IMRS FIPS schedule contracts . . . do not fall within this exception. [This last sentence refers to nonmandatory scheduled contracts established by GSA's Information Resources Management Service for Federal Information Processing Resources, discussed more fully at PM 3.1.5 b.3, which provides that orders against those contracts "must be competed."]

The contracting officer contends that the protest should be dismissed because the protester lacks standing to challenge the noncompetitive issuance of a purchase order against a supply schedule contract. Even if the protester has standing, its protest should be denied. The contracting officer contends that the unit which CSI offered for the OHNA's evaluation was both higher priced than CAS's unit and technically unacceptable,<sup>8</sup> and that the model 501/1000 which it quoted in its November 7 letter could not be considered since it was not the model furnished for evaluation.

The contracting officer's statement further contends that the protest's challenges to the suitability of the CSI model involve questions of contract administration which are outside the scope of review in the course of a protest. Alternatively, he finds that CAS's model met the requirements set for it, as demonstrated by the OHNA's market research, as well as by CAS's comments.<sup>9</sup> He contends that the protester's comments to the contrary are unsupported on the record.

The protester submitted comments on the contracting officer's statement complaining about its accuracy and making the following points:

- There were numerous discussions of "specifics" both with the OHNA and the purchasing specialist.
- CSI furnished its model 501 for evaluation, not, as the contracting officer represented, the model 502. The OHNA requested information on the model 502 because of its ability to provide statistical information, as set out in the minimum requirements.
- The contention that the CSI model was not accessible to an individual who had lost his or her left arm is a "pathetic" attempt at justification; such a person could use the device (apparently by placing his or her right arm in the left arm cuff).

The contracting officer replied to the protester's comments, recounting that after the purchasing specialist provided CSI with the list of minimum requirements, she contacted CSI's president and informed him "that she could not accept or consider any offers, revised or otherwise . . . [because] the unit that best met US Postal Service needs had already been determined and Purchasing would not request offers or open discussions with any vendors." In a second conversation, she is said to have told CSI "that a solicitation had not been issued and [that] unsolicited proposals would not be considered."

The contracting officer reiterates that the Service Center was not involved in the OHNA's

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<sup>8</sup> The contracting officer's statement is accompanied by a statement from the OHNA which contends, *inter alia*, that the CSI device tested was not "accessible to all users" because it could not accommodate individuals who had lost their left arm or who were confined to wheelchairs. The CAS device is said capable of providing statistical information upon demand if additional "accessories", i.e., the computer hardware, w[ere] purchased . . . , " and that the statistical information was not required at the time of the evaluation, but may be required in the future. The OHNA's statement contends that next day maintenance service was available for all the evaluated equipment, and that all of the equipment met the requirements for accuracy and certification.

<sup>9</sup> CAS submitted comments on the protest contending that its unit was selected because it had a number of features not available on other manufacturers' devices. One of the identified features is said to be the capability to test "using either arm." Another is "Upgrade Options - Printer along with RS232 port for data collection."

market research and product selection, and that the OHNA, who was not affiliated with the Service Center, lacked both procurement and contracting authority. The contracting officer reasserts that the blood pressure testing devices were ordered against an existing GSA contract "without issuance of a solicitation, engaging in formal competition, or award of a USPS contract."

The protester commented briefly on the contracting officer's response, noting that the response did not dispute that the model 501 had been evaluated. It reasserts that the OHNA conducted a selection process using a "specification sheet" (apparently a reference to the minimum requirements). CSI contends that only it can meet those requirements, and that it has, in fact, offered to do so at the lowest price of any of the firms solicited.

## DISCUSSION

The contracting officer is correct in stating that orders may be placed noncompetitively against Federal Supply Schedule contracts. Not only does PM 4.4.1 c.5 establish such orders as a form of noncompetitive purchasing which is not subject to the limitations and justifications otherwise prescribed for such purchases (see footnote 7, *supra*), but PM 3.1.5 b.2(a) states that "[p]urchasing organizations may order against FSSs when they meet their quality and delivery requirements. Additional competition is not required when using FSSs." The contracting officer is also correct in stating that the market research and product investigation activities of a requiring office, such as that accomplished by the OHNA in this case, are not directly related to the subsequent acquisition action.<sup>10</sup>

In this case, however, it is difficult to reconcile the actions of the Service Center with the assertion that the OHNA identified the specific CAS device which was sought, and that the Service Center did no more than order that device. Had the OHNA focussed on the CAS device to the exclusion of all others, there was no reason for him to furnish the Service Center with model numbers, prices, and GSA contract numbers for the other evaluated devices, or with a list of minimum requirements related to the established needs.<sup>11</sup> A request to purchase a specific device would more likely be accompanied by an explanation of the basis on which the determination had been made, rather than to be expressed solely by a handwritten designation of the item on the requisition as a substitute for the name of another device indicated there more formally in typewriting.

The purchasing specialist's actions are similarly inconsistent with the contention that all she did was to place an order for the CAS device. Doing so would not have required contacting the other two identified sources to verify their prices; at the most, only CAS would need to have been contacted, and that contact would have been necessary only for verification of information otherwise available with respect to the terms of its FSS contract. "Orders are

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<sup>10</sup> See, e.g., PM 2.1.1 b.1(a) and (b), establishing as responsibilities of the requirements organization both "[d]etermining the supply or service required" and "[i]dentifying potential sources," and 2.1.2 a., stating that "[m]arket research is central to any sound procurement plan. It should be addressed by both requisitioners and purchasers."

<sup>11</sup> And, of course, it was inconsistent with the OHNA's subsequent position that the CSI item was noncompliant with the minimum requirements to include its pricing information with the requisition. Accordingly, we afford that portion of the OHNA's statement, submitted in the course of the protest, little weight.

made directly from FSS contractors following the specific ordering instructions contained in the applicable schedule." PM 3.1.5 b.2.(d).

Instead, the purchasing specialist's actions and the record are fully consistent with an undertaking to obtain the required devices using simplified purchasing, a form of negotiated purchasing for which PM 4.3 establishes procedures. That section provides for the oral solicitation of quotations and requires, for purchases over \$10,000, "adequate" or "practicable" competition from "a sufficient number of qualified sources (normally at least three) to ensure that the price is fair and reasonable." Here, the purchasing specialist solicited three sources, eliciting specific prices in relation to the particular requirement. The November 14 letter which CSI received from the contracting officer confirms this characterization of the purchasing specialist's activities, since it refers to a request for quotations which was followed by an award without discussions. In such a situation, a competitive procurement was conducted. CSI, a participant in that competition, has standing to challenge the manner in which it was conducted. *Cf. Lista International Corporation*, P.S. Protest No. 90-47, September 11, 1990 (considering a protest by one of three FSS contractors solicited to provide modular storage cabinets under the terms and conditions of the FSS contracts).

The protest challenges the correctness of the OHNA's conclusions in two respects. CSI contends that CAS's model CA 1100-C does not meet the statistical information requirement and CAS does not provide next day service, while CSI's offer for its model 501/1000 meets all of the minimum requirements.

The OHNA stated in the course of the protest that "[a]ll equipment identified [that is, the models specified for each of the three manufacturers, including CAS] . . . had 'the availability of next day service'" and that CAS's device had the ability to provide statistical information on demand if accessories were provided. CAS's comments in the course of the protest, footnote 9, *supra*, appear to support the latter conclusion. The protester's contention that the CAS device and service do not meet the Postal Service's requirements is not backed by any evidence on this record. "Unsupported allegations . . . do not amount to evidence necessary to sustain a protest." *APEC Technology Limited*, P.S. Protest No. 88-23, June 30, 1988.

The contracting officer does not address the suitability of CSI's model 501/1000, since he contends that it could not have been considered in any event, because it had not been evaluated by the OHNA. As the record demonstrates, that premise was incorrect, since the model 501 was, in fact, the evaluated model. The OHNA instead determined, apparently, that CSI's more sophisticated model 502, rather than model 501, met the minimum requirements which had been established, and accordingly furnished that model number with the requisition.

Although the purchasing specialist had the minimum requirements before her as well as the model information from the three vendors supplied by the OHNA, the protest file gives no indication that she had before her any manufacturer's literature or other information by which she could independently confirm that the three identified devices met the minimum requirements, let alone any information that other models available from the identified sources might also satisfactorily meet those minimums. The information supplied by CSI in its November 7 submission did not assist appreciably in that respect. As noted above, it was inconsistent in discussing whether the model 501 met the requirement to provide statistical information.<sup>12</sup> As a result, although the purchasing specialist was incorrect in

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<sup>12</sup> Indeed, the descriptive literature furnished in the course of the protest casts doubt on the capabilities

asserting that the information submitted could not be considered because no competition was being conducted, that error was without consequence, since there was no basis for her to conclude that the lower priced model which CSI was offering met the Postal Service's needs.

The protest is denied.

William J. Jones  
Senior Counsel  
Contract Protests and Policies

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of the model 501/1000 in this respect. A specification sheet for the model 1000 makes no reference to the storage and retrieval of statistical information. A specification sheet for three models in the 500 series, including the model 501 and 502, shows "Data Collection and User Identification (if desired)" as a feature of the model 502, but not of the model 501, and the narrative for the 502 states: "All of the user interactions and data are stored for retrieval." No similar representation is made for the model 501.